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 2 for each coefficient in a T statistic and then
 3 what's called a P value for each and every
 4 variable.

5 Q. And did you use that approach to
 6 arrive at your material event days?

7 A. No.

8 Q. How did you arrive at your material
 9 event days?

10 A. Materiality is determined based on
 11 criteria, what kind of information is
 12 potentially material.

13 Potentially material doesn't mean
 14 that the event was material and it doesn't mean
 15 that the movement in the stock proved over a
 16 24-hour period to be significant.

17 For example, an earnings announcement
 18 is normally, with few exceptions, always
 19 material if you look at trading volume.

20 Q. My question --

21 A. But it doesn't move the stock.

22 Q. My question is, you selected a
 23 certain number of material event days in this
 24 case; is that correct?

25 A. They were selected a priori without

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 2 looking at the data.
 3 Q. Okay. And how did you select them?
 4 MR. HALL: Objection.
 5 A. I already talked about that.
 6 Q. You had a -- I'm sorry. You said you
 7 had 161 potentially material event days.
 8 A. Yes.

9 Q. Is that correct?
 10 And then didn't you identify some
 11 subset of that?

12 A. They're relevant.

13 Q. I'm sorry?

14 A. Relevant.

15 Q. Relevant?

16 A. They're, potentially material events
 17 are all events that could potentially influence
 18 the stock price or an investor would want to
 19 know about.

20 Q. Okay.

21 A. And they fit within a criteria that
 22 is broadly and liberally applied.

23 Q. So that's a --

24 A. That was 161.

25 Q. Okay.

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2 A. The second issue is, of those 161
 3 events, there is some subset of events that are
 4 relevant, and relevant in some form or fashion
 5 means that those events relate to either in an
 6 inflationary or in a corrective nature to the
 7 allegations in the complaint.

8 Q. And did you arrive at those 86
 9 relevant days through the application of your
 10 integrated analysis that you just discussed?

11 A. No.

12 Q. So how did you --

13 A. That was not determined based on how
 14 significant the event was, that was not
 15 determined before the regress -- after the
 16 regression was run. That was determined based
 17 on what the event was about.

18 Q. So it was a qualitative analysis.
 19 You just looked at the event and decided what
 20 was a material event of 161 days?

21 A. No. What was a relevant event.

22 Q. I'm sorry, relevant event?

23 A. Materiality and relevance are two
 24 different issues and we're dealing with a
 25 situation, for example, when CSFB might have

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2 issued an analyst report, that's a relevant day.
 3 Whether that report was material is
 4 another question.

5 Whether that report moved the market
 6 a significant amount is another question.

7 Those are all three separate
 8 questions that are independently decided.

9 Q. Okay.

10 A. And they're all decided on economic
 11 and conceptual grounds.

12 Q. Okay. So just so I understand, you
 13 have 161 potentially material days.

14 A. Right.

15 Q. And from that there is a subset, 86
 16 relevant days.

17 A. Yes.

18 Q. And how do you decide which of the
 19 161 potentially material days are in the
 20 subgroup of 86 relevant days?

21 MR. HALL: Objection.

22 A. Based on what are the allegations of
 23 the complaint and whether those events would be
 24 viewed as inflationary or corrective in the
 25 context of the allegations of the complaint or

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 2 whether they are in fact some of the acts
 3 specifically discussed in the complaint.
 4 Or if they are related. For example,
 5 if another analyst makes a similar type of
 6 statement that moves the stock up or down, we
 7 would put that in as relevant because it would
 8 indicate to us and it would be relevant in our
 9 determination as to what effect an analyst might
 10 have if they made a certain type of statement.

11 And it doesn't follow that all the
 12 relevant events at this stage would all
 13 ultimately be events that I would identify for
 14 adjusting inflation and so on. It's just merely
 15 they tell us something about how analysts and
 16 how certain pieces of information influence the
 17 stock price of AOL Time Warner.

18 Q. So with a company like AOL where
 19 there is just tons of news coming out of
 20 analyst reports and so forth, how do you
 21 maintain consistency in approach in identifying
 22 the potentially material days and the relevant
 23 days?

24 A. Well, it's pretty easy. You have a
 25 punch list. It either fits in the punch list or

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 2 it doesn't and there are admittedly going to be
 3 a lot of events that are in I would call the
 4 gray range.

5 In fact of the 161 days, I wouldn't
 6 be surprised if there's 20, 30 days where two
 7 different people could look at it and you could
 8 basically say oh, I might go in, might not go
 9 in.

10 Similarly there's probably another 10
 11 or 15 days where somebody might see that we
 12 missed a day because in doing our event search
 13 it's, you know, you're going through thousands
 14 and thousands of articles, it's easy to miss a
 15 day, especially at the preliminary stage like
 16 this or where somebody looked at it and thought
 17 that it shouldn't have influenced the stock
 18 price based on their first read, but if you read
 19 it more closely that maybe you would have
 20 realized that nah, that really was an event that
 21 should have gone out. So you have that kind of
 22 situation.

23 You probably have a plus or minus
 24 error rate on event selection about 5 to 10
 25 percent. But, you know, that being said, the

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 2 protocol is the protocol and the guys in my
 3 office have been using it now, the same protocol
 4 for at least two-and-a-half, three years now and
 5 it's some of the same guys so they're pretty
 6 good at it.

7 And ultimately I go back and back
 8 check everything anyway. In fact I go every
 9 night with a box and just go through the event
 10 study line by line and go through the articles,
 11 and remove or add days that are clearly, you
 12 know, I disagree, but usually that's only a few
 13 events.

14 You know, 161 probably, I probably
 15 add five events or take out five events but
 16 those really have no effect on the results at
 17 the end. They're usually pretty marginal. But
 18 that's what we do. And, you know, it's just
 19 good judgment, past experience and a sound set
 20 of criteria that are admittedly qualitative.

21 Q. Then what do you do with the 86
 22 relevant days?

23 A. In this particular case we're just
 24 looking at them to say can we say with some
 25 degree of confidence that analysts that make

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 2 certain types of statements of the type that are
 3 alleged should have been made by CSFB in this
 4 case, do they influence the stock price.

5 If do analysts in certain
 6 circumstances have influences on the stock
 7 price. Does the information which CSFB has
 8 alleged to have known about but not disclosed,
 9 did that information when it was revealed, did
 10 the materialization of that information cause an
 11 effect on the stock price. That's all we're
 12 looking at now.

13 Q. So you take a look at those relevant
 14 event days and you look to see if the
 15 information that was disclosed coincides with a
 16 statistically significant movement in the AOL
 17 stock price?

18 A. Or at least meaningful. Not every
 19 event has to be statistically significant.
 20 That's another mythology out there. It just has
 21 to be that as a group, the F test says that as a
 22 group, these relevant events are meaningful,
 23 meaning that to exclude them would be improper.

24 Q. From an economic point of view, what
 25 is meaningful? I mean how do you determine what

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1 **S. Hakala**2 **is meaningful?**

3 A. Meaningful means more probable than
 4 not. Technically the standard is about a 66
 5 percent degree of confidence.

6 Essentially a meaningful event is an
 7 event where you have a strong prior basis for
 8 believing that the news had an influence on the
 9 stock price so you already have news saying or
 10 some reason to believe it should have an
 11 influence.

12 And second of all, a group of
 13 meaningful events if they are strung together
 14 becomes statistically significant, so since they
 15 are statistically significant as a group in a
 16 joint test, the statistical literature says that
 17 you cannot exclude them.

18 **Q. But for a single event is there any support in the academic literature for using a 66 percent confidence level to determine materiality for an event?**

22 MR. HALL: Objection.

23 A. Not only is there support, in fact
 24 the academic literature says that that's good
 25 practice.

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1 **S. Hakala**2 **Q. For an event study?**

3 A. Yeah or for any study. Basically the
 4 rule of thumb in studies, I don't know -- you
 5 know, this is one of the things that drives me
 6 nuts. People think statistically significant is
 7 like this magic thing. And I have a quote in
 8 there talking about it's not a talismanic term.
 9 It's not -- it doesn't have the meaning.

10 There are events where there's a gray
 11 area.

12 If it's statistical significance or
 13 above a threshold, you can't remove it.

14 If it's between a certain number and
 15 a certain number, it's in a gray area where
 16 depending on how strong your prior beliefs are
 17 about that information, you should leave it in.

18 If it's below that number, then
 19 normally you should leave it out of your
 20 analysis but not necessarily move from the
 21 regression.

22 So there's a lot of what I would call
 23 cookbook, poorly trained applied econometricians
 24 out there, including guys with pretty
 25 significant academic credentials, who don't know

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2 classical statistics. Classical statistics says
 3 that if you have a T statistic greater than one,
 4 all else being equal, is it more probable than
 5 not that that variable matters and that variable
 6 will improve the adjusted goodness of fit of
 7 your regression, so it is better to leave it in
 8 than take it out from a bias and consistency
 9 standpoint.

10 Most statistical packages have built
 11 in them what's called a step-wise regression
 12 function. And while I don't recommend it as a
 13 process because it's too much data mining, the
 14 step-wise function has what's called an
 15 inclusion and exclusion criteria. That's the
 16 term of art.

17 And an inclusion and exclusion
 18 criteria basically says if you have a group of
 19 variables in your regression and you want to see
 20 if adding this additional variable should occur,
 21 if it has a T statistic of about 1 or 1.2 or
 22 1.33, depending which criteria you set, then it
 23 goes into the regression.

24 Now so basically you have a series of
 25 SAS, RATS, SPSS, all the statistical packages,

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1 **S. Hakala**

2 every one of them has what's called an inclusion
 3 and exclusion criteria that says an event does
 4 not have to be statistically significant to be
 5 included in the regression package.

6 **Q. I understand about inclusion but now I'm asking what conclusions can you draw about the event and its effect on the stock price at the 66 percent confidence level?**

10 MR. HALL: Objection.

11 A. That it is more probable than not
 12 that that event had an effect and that in
 13 combination with other events of similar or
 14 greater magnitude, the total effect was
 15 significant. It's a classic analogy.

16 **Q. And there's support for drawing that conclusion in the academic literature.**

18 A. Oh, absolutely. The concept of joint
 19 tests and joint testing of a group of dummy
 20 variables is in the literature and I cite it.

21 **Q. I understand that.**

22 A. I cite it in my report.

23 **Q. I'm talking about a single -- take a single analyst report by CSFB --**

25 A. Yes.

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2 Q. -- that is confounded with other
 3 information, let's say another report that has a
 4 T statistic at the 66 percent confidence level.

5 A. I don't know how one would deal with
 6 that and that's a take it as it's given.

7 I mean a lot of the CSFB reports that
 8 are mere reiterations, I probably would not flag
 9 those as causing the inflation in the stock
 10 price to change because they're not really
 11 changing what CSFB is saying.

12 That doesn't mean that they aren't
 13 false and misleading. That doesn't mean that
 14 they're not material or don't have impact in the
 15 sense that if CSFB had disclosed what it knew,
 16 it would have been different, but that's a
 17 different issue.

18 Q. Agreed.

19 A. That's a different issue.

20 Now take September 18th and 19th.
 21 Certainly based on what I understand it, in fact
 22 the report came out on the 18th and probably the
 23 19th, I'd probably take the joint effect of
 24 those two days, maybe present it with different
 25 percentages to the jury; half of the increase

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2 over those two days is attributable to CSFB, 40
 3 percent, 60 percent, 75 percent and show what
 4 effect that has on the damages.

5 Q. But again --

6 A. You can't say it had no effect, see?

7 Q. But from an economic point of view,
 8 you can't point me to a recognized methodology
 9 for determining what the effect was.

10 A. In fact the academic literature is
 11 very frank in acknowledging that when you have
 12 confounding events, it's a very difficult thing
 13 to do, and that unless the events are not
 14 sequenced and you can do some detailed intraday
 15 trading studies or unless one can use some other
 16 heuristic method, valuation method, that
 17 ultimately it's a facts and circumstances and
 18 it's a matter of judgment and experience.

19 And this is where all econometrics
 20 and economics is art and science and there's a
 21 point at which judgment cannot be ignored either
 22 at the start or at the end of the process and
 23 any suggestion that to the contrary I think is
 24 naive.

25 Q. But how did you select your 34

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2 analyst comment days?

3 A. You're talking about where CSFB made
 4 comments?

5 Q. I think if you take a look at
 6 paragraph 17 of your report. Sorry.
 7 (Witness reviewing exhibit.)

8 A. Those were just days where I
 9 identified where an analyst made a comment that
 10 was sort of new, different or whatever, but
 11 again, that was a qualitative criteria. It was
 12 just judgment and experience and I didn't even
 13 pretend that that's an exclusive list.

14 Q. I mean so there could be other days
 15 where analysts spoke where there was material
 16 information during the class period of AOL.

17 A. Where they changed something, where
 18 they increased, decreased a target, yes, I'm
 19 sure that there are some days where some analyst
 20 said something that we probably missed. I know
 21 that there are.

22 Q. And --

23 A. In fact I know a couple of the days I
 24 suspect where we didn't pick them up where the
 25 stock moved significantly so...

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2 Q. And what sources did you use to find
 3 the analyst reports for this case?

4 A. Basically we're looking on Bloomberg
 5 because Bloomberg will pick up any analyst that
 6 makes significant announcements or changes or
 7 certain of them.

8 With the Goldman Sachs analysts where
 9 you don't have direct access without discovery,
 10 or at least I don't historically, that's a
 11 source.

12 Factiva and Lexis will sometimes pick
 13 up the analyst changes.

14 There's a couple of news sources, AFX
 15 International and JAG, that occasionally note
 16 analyst changes.

17 We'll also then go to Thomson
 18 Financial and download all the analyst reports
 19 we can obtain.

20 Q. Did you use Multext?

21 A. No, it's Investext. Investext is
 22 typically more thorough than Multext, but still
 23 even on Investext, certain brokerage firms will
 24 block you from access unless you have access to
 25 the account.

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2 MR. GESSER: Let's take a ten-minute
3 break.

4 THE VIDEOGRAPHER: The time is 2:44.
5 We are going off the record.

6 (Recess is taken.)

7 THE VIDEOGRAPHER: This is the start
8 of Tape No. 4.

9 The time is 2:53.

10 BY MR. GESSER:

11 Q. I just have a couple of questions
12 before I turn it over to Mr. Rudman.

13 Turning now back to the affidavit
14 that you provided in the In Re AOL case, this is
15 Exhibit 5. If you look at page 23.

16 A. Yes.

17 Q. Paragraph 35, second sentence says
18 that, "Charter and Vivendi had significant
19 company specific events such that they were not
20 sufficiently correlated with AOL Time Warner's
21 return to justify inclusion in the index."

22 Can you explain what that means?

23 A. That means that for whatever reason
24 given this specification, when I tested Charter
25 and Vivendi incrementally after I had already

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2 chosen the index, they didn't significantly
3 improve the index or didn't alter it so I didn't
4 leave them in.

5 Q. Okay. And yet you included Vivendi
6 in your index in this case.

7 A. Yeah. I think Vivendi was a close
8 call and I think in this case for some reason
9 when I controlled for some additional events
10 that probably I put it in, but it was like right
11 at the threshold.

12 In other words, putting it in or
13 taking it out really doesn't change much.

14 Q. You indicated at the start that
15 you've given a number of depositions; is that
16 correct?

17 A. Yes.

18 Q. And you provided expert reports in a
19 number of cases?

20 A. Yes.

21 Q. Do you recall if your testimony has
22 ever been struck in litigation?

23 A. Struck is a broad term. There are
24 some instances where on a summary judgment type
25 of motion my testimony was not reached because

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2 of reasons unrelated to my testimony. That only
3 happened once or twice.

4 There's a case called Ecoland versus
5 LaidLaw where the jury testimony that came
6 before me, in fact liability testimony, meant
7 that my numbers didn't go to the jury.

8 In terms of being stricken, the only
9 thing that has been limited out is the ability
10 to put on aggregate damages either using a
11 methodology called a Weibel curve, which
12 admittedly was something in the academic
13 literature but I used in one case and then in
14 another case, another two cases, on legal
15 grounds, although one case suggested sympathy
16 that the Daubert issues weighed on that decision
17 as to whether to have aggregate damages or not.

18 Q. So your aggregate damages model has
19 been excluded on Daubert grounds; is that right?

20 MR. HALL: Objection.

21 A. One was and one has never been
22 excluded on Daubert grounds, and in fact in at
23 least two rulings it has been admitted on
24 Daubert grounds.

25 And then in two cases, one which went

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2 to trial, on legal grounds it was not a relevant
3 inquiry to the jury but it was not formally
4 stricken.

5 In other words, it was not found
6 unreliable under Daubert, but it was not -- it
7 was deemed not the relevant issue, and it's kind
8 of hard to explain, but there's a what I would
9 call a trial management issue as it's been
10 explained to me that goes into that decision.

11 Q. Can you tell me what happened in Dell
12 versus Four Systems Inc.?

13 A. That was a decision as to what the
14 PSLRA requires. In Dell versus Four Systems,
15 the judge never granted any Daubert motion and
16 in fact if I remember the transcript, he
17 castigated the defendant saying there's not a
18 Daubert issue.

19 He felt that the private securities
20 litigation reformat because of the way it is
21 drafted, essentially requires that damages be
22 determined on an individual case by case basis,
23 so therefore the proper determination of the
24 jury is essentially what amounts to the
25 parameters of a plan of allocation and then

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 2 damages would be calculated on a claims made
 3 basis.
 4 Q. And then In Re Clarent, do you
 5 remember what happened in your aggregate damages
 6 model?
 7 A. In Clarent, Judge Breyer ruled that
 8 the aggregate damages model is not necessary for
 9 the jury to decide but he did not exclude it
 10 from consideration on either bases.
 11 He felt that it was not what the jury
 12 should decide; that it would be better for the
 13 jury to decide the parameters of inflation per
 14 share under various grounds and then use the
 15 claims process, but he did not, as I remember,
 16 foreclose the use of aggregate damages
 17 information maybe for posting a bond and for
 18 other purposes.
 19 Q. Okay.
 20 A. And I think the similar ruling is in
 21 Broadcom, although Broadcom is the one case
 22 where there a what I call a Daubert question
 23 raised in the opinion.
 24 Q. And was Broadcom the case in which
 25 you indicated that you felt most -- stock that

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 2 was heavily covered, that most information would
 3 be incorp -- most new material information would
 4 be incorporated into the stock price within an
 5 hour or two?
 6 A. Yes, if it's clean, meaning it's
 7 unambiguous.
 8 If it's uncertain, that does not
 9 prevent there being follow-on reaction on the
 10 following days, and in fact in Broadcom, there
 11 were at least two or three instances where there
 12 was leakage and there were multiple days with
 13 small event windows around them associated with
 14 loss causation. In other words, loss causation
 15 was not a single day drop.
 16 And in fact the Wall Street Journal
 17 article that came out was only modestly
 18 significant and then there was some follow-on
 19 disclosures that continued to cause the stock to
 20 ripple down, but they were each discrete events.
 21 In other words, additional news, an additional
 22 article and additional analyst comment.
 23 MR. GESSER: Those are all my
 24 questions. Thank you.
 25 THE VIDEOGRAPHER: The time is 3:00.

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1 S. Hakala
 2 We're going off the record.
 3 (Off the record.)
 4 THE VIDEOGRAPHER: The time is 3:01.
 5 We are on the record.
 6 EXAMINATION BY
 7 MR. RUDMAN:
 8 Q. Dr. Hakala, my name is Jeff Rudman.
 9 I'm from Wilmer Hale and I represent
 10 Mr. Quattrone.
 11 Can we agree you're not here as a
 12 fact witness today?
 13 A. Yes.
 14 Q. Can we agree you're here as an expert
 15 witness?
 16 A. Yes.
 17 Q. And would it be fair to say that
 18 you're here as an economic expert witness?
 19 A. Yes.
 20 Q. Is it also fair to say that in the
 21 course of doing your work in this matter you
 22 reviewed approximately three dozen Credit Suisse
 23 First Boston reports on AOL?
 24 A. Yes.
 25 Q. And of those 36, is it fair to say

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 2 that you deemed all of them relevant, right?
 3 A. They're all relevant, yes.
 4 Q. Some you deemed material.
 5 A. Yes, but I mean they're all really
 6 material in one sense or another, but some
 7 material in the sense that there's something in
 8 the report that would change something. In
 9 other words, there's a change in the report in
 10 some way or some substantive comment that's
 11 different from or may comment on the market in a
 12 way different from a prior report.
 13 Q. Which would have at least a mix, a
 14 change on the information mix, right?
 15 A. Yes. Now whether the change is
 16 enough to move the stock is hard to say.
 17 Q. Correct, because there's a third
 18 category of report that does in your view have a
 19 statistical significant impact on stock price.
 20 MR. HALL: Objection.
 21 A. Yes.
 22 Q. So is this a fair statement; broadly
 23 speaking, all the reports are material?
 24 A. Yes.
 25 Q. Some of the reports are -- strike

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1 **S. Hakala**2 **that.**3 **All the reports are relevant.**

4 A. Yes.

5 **Q. Many of the reports are material.**

6 A. Yes.

7 **Q. And a subset of the material reports**
8 **would have a statistically significant impact on**
9 **stock prices.**

10 MR. HALL: Objection.

11 A. Relative to the hypothetical
12 alternative, I think all would, but relative to
13 how they relate to the market as a whole, yes, I
14 think that's fair.15 **Q. Fair enough.**

16 Now with respect to what

17 **Mr. Quattrone did, all right, were you told by**
18 **counsel to assume the truth of the allegations**
19 **in the complaint?**

20 MR. HALL: Objection.

21 A. Yes.

22 **Q. With respect to the allegations in**
23 **the complaint, can you tell me which allegations**
24 **in the complaint help you to understand whether**
25 **Mr. Quattrone wrote any of the three dozen**

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1 **S. Hakala**2 **reports at issue?**3 MR. HALL: Objection.
4 A. There's at least a few emails where
5 Mr. Quattrone is involved on some issues with
6 regard to concerns about Ms. Martin and her
7 particular views and some of what I call
8 internal politics.9 I assume that he reviewed all the
10 reports before they went out or most of them,
11 but I don't know that for a fact.12 **Q. Okay. With respect to your first**
13 **comment that Mr. Quattrone is involved in some**
14 **matters from the complaint?**

15 A. Yes.

16 **Q. That's paragraph 48 and 49, right?**

17 A. Possibly.

18 **Q. You want to take a look?**

19 A. Yeah.

20 (Witness reviewing exhibit.)

21 A. Too many pieces of paper here.

22 (Witness reviewing exhibit.)

23 A. Okay.

24 **Q. Was that what you were referring to**
25 **paragraphs 48 and 49?**

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1 **S. Hakala**

2 A. At least this, yes.

3 **Q. At least this, and maybe something**
4 **else but you don't remember as you sit here now.**5 A. There may be something else or it may
6 have been something else that, you know, that
7 was indicated to me may come out in discovery,
8 but at least I had an understanding that
9 Mr. Quattrone was head of a group and may have
10 been well aware of these issues.11 Whether this is just a manifestation
12 of that or whatever, I don't know.13 **Q. May have been well aware, correct?**14 A. Yeah. I didn't make a decision one
15 way or another.16 **Q. Right.**17 **And you don't know whether or not he**
18 **was aware or not.**19 A. I didn't make any determination of
20 that.21 **Q. You don't as you sit here now claim**
22 **that Mr. Quattrone is the author of any of these**
23 **reports, do you?**

24 MR. HALL: Objection.

25 A. I don't know.

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1 **S. Hakala**2 **Q. You weren't instructed for purposes**
3 **of your work to assume that he's an author,**
4 **right?**5 A. I wasn't instructed to assume one way
6 or another.7 Usually if a report comes out from a
8 major investment bank brokerage firm, I
9 typically assume that both the firm and the
10 identified authors are authors, as well as
11 certain management who review them could be also
12 held accountable if they knowingly allow the
13 report to go through in their review
14 responsibility.15 **Q. Right, but you don't know what**
16 **Mr. Quattrone did or didn't know, right?**

17 A. Correct.

18 **Q. Now, sir, with respect to the number**
19 **of reports that you thought statistically had a**
20 **significant impact on the market price of AOL**
21 **stock --**

22 MR. HALL: Objection.

23 A. Yes.

24 **Q. -- how many of those do you say there**
25 **were?**

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MR. HALL: Objection.

MR. RUDMAN: Grounds, please?

MR. HALL: The term "impact." I think you probably have a different term, a definition of the term "impact" versus what Dr. Hakala prefers.

BY MR. RUDMAN:

Q. Tell you what, let's use a term you like better, Dr. Hakala.

A statistically significant effect on stock price?

A. Okay.

MR. HALL: Objection.

BY MR. RUDMAN:

Q. Well, tell me what -- you want "impact"? You want "effect"? You want "consequence for"?

I'll do it your way, sir.

A. Well, I think there's two issues.

One is every report, to the extent it made a statement different from what the statement would have been --

Q. Right.

A. -- would have had a statistically

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S. Hakala

impact against the alternative statement that might have been made --

Q. Right.

A. -- by itself --

Q. Right.

A. -- although some more than others.

As far as a report that actually made a statement that at least in conjunction with other reports on the same day, I think July 19th, 2001 is a negative event --

Q. Right.

A. -- and partially corrective, and

September 18th and 19th where I'm pretty certain the first report we identify came out on the 18th and 19th, I am convinced that the CSFB report played a substantial role in the increase in the stock price in that time period.

Q. So the CSFB report on the 19th of July had a significant negative consequence to the stock price, correct?

A. Right.

Q. And on the 18th and 19th of September, the report or reports of CSFB had a significantly positive consequence to the stock

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S. Hakala**price, right?**

A. Yes.

Q. That's three reports, right?

A. Yes.

Q. That leaves about 33 in your universe?

A. Or more, yeah.

Q. Or more. All right.

With respect to the other 33, are those 33 reports as to which you say I can't tell you whether there was a statistically significant consequence to the stock price or not?

MR. HALL: Objection.

A. Well, there's two issues.

One is again, the alternative. I can say with confidence that had CSFB issued some of the statements that I see in emails, unambiguously given what we know of happened when other analysts issued such dramatic changes, with a very high degree of confidence that would have moved the stock.

But I can't say that that report by itself altered investments consensus assessment

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of the stock enough to cause the stock price to change up or down with the proviso that I don't know what else was going on.

In other words, April 18th of 2001 is a good example of where we know there were some negative analyst reports coming out.

Q. Right.

A. I don't know to what extent CSFB and some of the other analyst reports kept the stock from falling in response to the negative reports.

And so what do you do when you have positive analyst reports here and negative analyst reports here and ones in the middle? Can we say that the CSFB positive report did not prevent the negative report from having a significant effect?

I don't think we can say that with any certainty and we certainly have no way economically of testing that.

Q. Fair enough.

So some things just cannot be intellectually honestly parsed, correct?

A. You can't parse them but that, as I

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1 S. Hakala
 2 would say, doesn't allow -- it doesn't prevent
 3 us from using analogies, what we call equivalent
 4 of them, equivalent disclosure of them, from
 5 drawing reasonable conclusions about what the
 6 alternative world would have looked like.

7 Q. Now with respect to the three reports
 8 you singled out for me, July 19, September 18
 9 and September 19th of 2001 --

10 A. Yes.

11 Q. -- tell me every fact you've assumed
 12 with respect to what role Mr. Quattrone had with
 13 respect to those three reports.

14 A. I implicitly assumed that he knew
 15 those reports were going out, either reviewed
 16 them and approved them or otherwise allowed them
 17 to go out, and knew full well some of the
 18 information, maybe not all the information,
 19 that's alleged in the complaint but was not
 20 disclosed.

21 Q. All right. Now tell me every fact
 22 you have for the proposition that Mr. Quattrone
 23 read the reports before they went out.

24 A. I don't. I think we have agreed I'm
 25 not a fact witness and I'm just taking the

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1 S. Hakala
 2 complaint as given. This is class cert. I
 3 don't know what discovery will show.

4 Q. All right. Fair enough.

5 Would you agree with me, sir, that
 6 the realm of your factual knowledge with respect
 7 to what Mr. Quattrone did vis-a-vis these three
 8 reports is contained in the complaint and that's
 9 it?

10 A. The complaint and maybe some other
 11 background, but not much beyond that.

12 Q. Okay. So it's in the complaint or
 13 some other background, but nothing beyond that,
 14 right?

15 A. Correct.

16 Q. All right. Can you tell me what this
 17 other background is?

18 A. Just general knowledge about what
 19 somebody who's head of a group would do, a
 20 normal inference that I would draw about a
 21 manager or an overseer of a particular analyst
 22 group and the fact that there is an email
 23 suggesting some acknowledged intervention.

24 I would assume logically that that's
 25 not his own knowledge because in fact that email

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1 S. Hakala
 2 suggests a more active knowledge of Ms. Martin
 3 than just that one email would reflect.

4 Q. Is that an email that you're
 5 referring which Mr. Quattrone wrote?

6 A. The second one he wrote.

7 Q. What's the email that Mr. Quattrone
 8 wrote? Show me.

9 A. I thought the second one he wrote.
 10 (Witness reviewing exhibit.)

11 A. Forty-nine.

12 Q. Yah. What's the email that he wrote?

13 A. Quattrone responded with an email on
 14 April 24th, just your usual self dramatizing.

15 Q. You understand that to be

16 Mr. Quattrone's email?

17 A. It says Quattrone responded to this
 18 email.

19 (Witness reviewing exhibit.)

20 A. Oh, I see, Kiggen responded. Oh, I'm
 21 sorry.

22 Q. Okay.

23 A. I misread that.

24 Q. Fair enough. Fair enough. Those
 25 things happen.

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1 S. Hakala
 2 Can you tell me what email
 3 Mr. Quattrone wrote to your knowledge?

4 A. No.

5 Q. If I represented to you that
 6 paragraph 49 referred to an email that
 7 Mr. Quattrone did write which says, "Background"
 8 question mark, okay? Are you with me thus far?

9 A. Okay.

10 Q. In other words, if you look at what's
 11 referenced in paragraph 49, there is an email
 12 that Mr. Quattrone wrote.

13 A. Okay.

14 Q. The full text of that email is
 15 "Background" question mark.

16 A. Okay.

17 Q. All right?

18 Do you infer from Mr. Quattrone's
 19 sending an email that says "Background" question
 20 mark he is deeply immersed in the facts?

21 A. I don't know.

22 Q. Okay.

23 A. I mean that's really a factual
 24 argument. I mean I don't know to what extent
 25 he's reviewing reports or not reviewing reports.

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1 S. Hakala
 2 I don't know to what extent he's knowledgeable
 3 after that date but not before. Those are
 4 issues that are just -- I mean at this point,
 5 that's just beyond the scope of where I'm
 6 looking.

7 Q. Fair enough.

8 And similarly you don't have any
 9 knowledge at this point as to what Mr. Quattrone
 10 did know or didn't know about the state of AOL's
 11 business.

12 A. Correct.

13 Q. Now a couple more questions and I'm
 14 done.

15 You wrote a declaration which is now
 16 marked as Exhibit 1 called "Declaration of Scott
 17 D. Hakala Regarding Market Efficiency."

18 A. Yes.

19 Q. Can I ask you, what caused you to
 20 write a declaration on market efficiency?

21 A. Because at class cert, market
 22 efficiency and I sort of group within that
 23 reliance is my understanding of the core issue
 24 in all if -- most if not all circuits at the
 25 time I wrote this.

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1 S. Hakala
 2 And additionally, that's the common
 3 issue for assuming common reliance under Basic
 4 v. Levinson.

5 Q. I absolutely agree with you, sir,
 6 that the market has to be efficient for Basic to
 7 apply. No argument about that. Fair enough?

8 A. Right.

9 Q. Why did you assume that the core
 10 issue on class certification in this case would
 11 be whether the market was efficient or not?

12 MR. HALL: Objection.

13 A. I don't know if I viewed it as the
 14 core issue so much as efficiency entered broadly
 15 as efficient in the context of the allegations
 16 of this case in the sense of common reliance on
 17 analyst reports, and so that's why in this
 18 report I tied that in.

19 But I mean also this is an opening
 20 report where as I understand it, the plaintiffs
 21 merely need to make a *prima facie* case and prior
 22 to a few decisions in the Second Circuit and
 23 some other circuits, traditionally I would
 24 actually advise people not to put in an expert
 25 report at this stage.

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1 S. Hakala
 2 In other words, I would wait to see
 3 what the defendants object to and then come back
 4 with a reply report.

5 Q. Correct, and that's normally what
 6 happens, which is the plaintiff waits to see
 7 what the defendant is complaining about and then
 8 puts it in a reply report, right?

9 A. That was prior to this last year.

10 Q. I see.

11 So you think the PolyMedica case
 12 changed the landscape?

13 A. No, not in --

14 Q. In the First Circuit?

15 A. In the First Circuit, no, no.

16 MR. HALL: I would just object that
 17 now we're getting into an area of legal --

18 A. And I don't assume that. I'm really
 19 thinking of -- I think just as a matter of
 20 policy. And obviously this is outside of
 21 expertise. This is really legal issues as far
 22 as I know. It really has to do with some of the
 23 decisions in like the Second Circuit in the In
 24 Re IPO decision, where it might suggest that at
 25 least as a precautionary measure and at least

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1 S. Hakala
 2 certain cases where you have some indication
 3 there may be a contest on an issue, you might as
 4 a proactive matter put out an initial expert
 5 report rather than waiting after a reply.

6 Q. Were you instructed as a proactive
 7 matter to put out an expert report on market
 8 efficiency in this case on the grounds that you
 9 would likely face a challenge from the
 10 defendants as to market efficiency?

11 MR. HALL: Objection.

12 A. I don't know and I wouldn't
 13 characterize it that way, and I didn't really
 14 think about it.

15 You know, it may be that the title is
 16 more just because that's the classic title I
 17 always put on a declaration that's an opening
 18 declaration in class cert even if the issue
 19 deals with reliance as much as market
 20 efficiency.

21 Q. So is it a fair statement to say as
 22 you sit here now, you're not exactly sure why
 23 you wrote an affidavit regarding market
 24 efficiency?

25 MR. HALL: Objection.

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1 S. Hakala
 2 A. No. It's a fair statement that I
 3 wrote a declaration regarding market efficiency
 4 because I wanted to show the market was
 5 efficient and that the market responded to
 6 certain kinds of information and certain kinds
 7 of information was material, and I understood
 8 that that would be of assistance to counsel in a
 9 number of matters, including, as evidenced by
 10 this deposition, that that event study and the
 11 inferences one might draw from it would be
 12 particularly relevant at class certification.

13 Q. Okay. Last sequence.

14 In the AOL case you gave one
 15 affidavit that you've already had marked as in
 16 evidence here, correct?

17 A. Actually there's a second
 18 declaration.

19 Q. Okay. So there are two declarations.

20 A. There's two, but the second was in
 21 connection with settlement and in response to
 22 opposition.

23 Q. I was going to ask you, did you not
 24 work on a plan of distribution at AOL?

25 A. Yes. I converted my event study

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1 S. Hakala
 2 analysis, but beyond the event study analysis,
 3 damage analysis that I had originally done for
 4 mediation that was not in the affidavit --

5 Q. Right.

6 A. -- into a plan of allocation and then
 7 in response to objectors, pointed out to the
 8 court why that plan worked or made sense or was
 9 rigorously developed.

10 Q. How about if I try this: Were there
 11 three writings from you; one is the affidavit
 12 that's been marked as Exhibit 5, two, there was
 13 damages analysis done by you for a mediation,
 14 and three, there was in effect a plan of
 15 distribution which was ultimately relied upon?

16 A. In the mediation I don't think I ever
 17 wrote anything up, but I presented some exhibits
 18 and charts which counsel used in mediation. I
 19 never actually participated in the mediation in
 20 any direct way.

21 Q. Right, but you prepared materials for
 22 counsel in the mediation.

23 A. Yes.

24 Q. And is it fair to say, and I know
 25 this is not an exact question, you did a lot of

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1 S. Hakala
 2 work at AOL, right?

3 A. Yeah.

4 Q. I mean a lot of work.

5 A. Yeah.

6 Q. And your damages were on who should
 7 get what by way of recovery was particularly
 8 extensive, right, sir?

9 A. Yes.

10 Q. So at the time you did that work on
 11 damages, you had a chance to assess what
 12 shareholder of AOL holding when was damaged by
 13 what, correct?

14 MR. HALL: Objection.

15 A. At least with regard to the
 16 allegations in that case and assumed in that
 17 case, yes.

18 Q. And that caused you, though, to
 19 reflect on damages caused by AOL versus damages
 20 caused by other sources, right?

21 MR. HALL: Objection.

22 A. Not so much as an overlap and in that
 23 particular context we had Ernst & Young as a
 24 defendant.

25 I was also aware that there may be

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1 S. Hakala

2 analyst cases and that those damages may overlap
 3 in part.

4 Q. Right, but you were concerned to
 5 produce a fair plan of distribution, right?

6 MR. HALL: Objection.

7 A. Yes.

8 Q. One that compensated somebody for
 9 something either the auditors had done wrong or
 10 the issuer had done wrong.

11 MR. HALL: Objection.

12 A. Yes.

13 Q. And as you prepared that
 14 conscientious careful plan of distribution, you
 15 weren't trying to compensate AOL shareholders
 16 for wrongs done by parties who weren't
 17 defendants to the proceeding, correct?

18 MR. HALL: Objection.

19 The only money being distributed in
 20 that plan of allocation was from AOL and
 21 E&Y.

22 MR. RUDMAN: Absolutely right.

23 BY MR. RUDMAN:

24 Q. So all you were trying to do was to
 25 determine who got what based on what AOL and

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1 **S. Hakala**
 2 **Ernst & Young had done wrong, correct?**
 3 MR. HALL: Objection.
 4 A. Yes, but with the proviso that that
 5 did not preclude any other possibilities of any
 6 other defendants for any other reasons.
 7 Q. Oh, I understand that. I wasn't
 8 suggesting that.
 9 A. Okay.
 10 Q. But the plan you prepared was after a
 11 lot of work, a lot of thought and a lot of
 12 examination of a lot of circumstances as to who
 13 should get what and from whom, right?
 14 A. Yes.
 15 MR. HALL: Objection.
 16 MR. RUDMAN: No further questions.
 17 Thank you.
 18 (Continued on next page to include
 19 jurat.)
 20
 21
 22
 23
 24
 25

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1 **S. Hakala**
 2 THE VIDEOGRAPHER: The time is 3:20.
 3 We are going off the record.
 4
 5
 6

SCOTT D. HAKALA

10 Subscribed and sworn to before me
 11 this day of 2007.
 12

13 _____
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1
 2 **CERTIFICATE**
 3
 4 STATE OF NEW YORK)
 5) ss.:
 6 COUNTY OF QUEENS)
 7
 8 I, ANNETTE ARLEQUIN, a Notary Public
 9 within and for the State of New York, do
 10 hereby certify:
 11 That SCOTT D. HAKALA, the witness
 12 whose deposition is hereinbefore set forth,
 13 was duly sworn by me and that such
 14 deposition is a true record of the
 15 testimony given by such witness.
 16 I further certify that I am not
 17 related to any of the parties to this
 18 action by blood or marriage; and that I am
 19 in no way interested in the outcome of this
 20 matter.
 21 IN WITNESS WHEREOF, I have hereunto
 22 set my hand this 12th day of July, 2007.

ANNETTE ARLEQUIN, CCR, RPR

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 5 MR. GESSER 7
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1
2 ERRATA SHEET FOR THE TRANSCRIPT OF:
3 CASE NAME: IN RE CREDIT SUISSE-AOL SECURITIES LITIGATION
4 DATE: JULY 10, 2007
5 DEPONENT: SCOTT D. HAKALA
6 Pg. Ln. Now Reads Should Read Reason
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 SCOTT D. HAKALA
20 SUBSCRIBED AND SWORN BEFORE ME
21 THIS ____ DAY OF _____ 2007.
22 _____
23 _____
24 (Notary Public)
25 MY COMMISSION EXPIRES: _____

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